No. 17712

In The

UNITED STATES COURT OF APPEALS

For the Ninth Circuit

PACIFIC PLYWOOD CO., a Corporation, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent.

BRIEF FOR PETITIONER, PACIFIC PLYWOOD CO.

Upon Review from the National Labor Relations Board

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INDEPENDENT PARTICLE BOARD EMPLOYEES, INC., Respondent.

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STATEMENT OF JURISDICTION

These proceedings originated in a charge filed against Petitioner, Pacific Plywood Co., hereinafter in this brief designated as "Petitioner", by Local Union No. 3-436, International Woodworkers of America, AFL-CIO, hereinafter designated as "IWA", on the 15th day of February, 1961, before the National Labor Relations Board, charging the Petitioner with certain alleged unfair labor practices under the National Labor Relations Act.

After hearing, the Trial Examiner, on July 5, 1961, issued his

Intermediate Report and Findings and Conclusions of Law that Petitioner had engaged in unfair labor practices within the meaning of the Act.

After exceptions filed by Petitioner, the National Labor Relations Board, on November 27, 1961, issued its Decision and Order affirming and adopting the Findings and Conclusions and Recommendations of the Trial Examiner that the Petitioner had been guilty of unfair labor practices and making certain orders in connection therewith as set out in said Decision and Order.

The Petitioner transacts business within the Judicial District of Oregon wherein the alleged unfair labor practices are said to have occurred. This Court, therefore, has jurisdiction of this matter by virtue of Section 10(f) of the National Labor Relations Act, as amended.

STATEMENT OF THE CASE

One Sally Pruitt was employed by Petitioner at its Dillard, Oregon plant as a tile grader in that company's Sierra Division, which division was engaged in finishing the Petitioner's particle board product into flooring tile, marketed under the brand name, "Par-TILE". The Independent Particle Board Employees, Inc., hereinafter designated as "Respondent Union", was the certified bargaining agent for the employees of Petitioner in the Sierra Division by virtue of a contract between Petitioner and Respondent Union. The plywood portion of Petitioner's operation was covered by a contract with IWA which embraced approximately 150 men. Sixty-seven employees of Petitioner were members of and represented by the Respondent Union.

Early in September of 1960, Mrs. Pruitt was selected as shop steward for Respondent Union and as such shop steward she processed a grievance concerning her brother-in-law, one Ray Pruitt. She became embittered at her fellow employees because she felt that they failed to sustain her in the manner in which she handled her brother-in-law's grievance. Her manner and conduct became so objectionable to those with whom she worked and came in contact that the morale of the entire operation was affected.

In early November of 1960, Mrs. Pruitt was tried and expelled from Respondent Union because of her activities which the membership considered detrimental to it. At that time she contacted N.L.R.B. officials in Portland and Seattle and thereafter, without revealing that she had made such a contact, she proceeded in a course of conduct calculated to harm Respondent Union and to force it into actions which she could contend were discriminatory. After her expulsion from Respondent Union, her troublemaking continued until four of her fellow employees directed a letter to Petitioner advising it that they would quit their jobs if it did not dispense with the services of Mrs. Pruitt.

At about the same time, sixteen of her fellow employees executed a petition to Petitioner requesting that it immediately act to remove Mrs. Pruitt from its employment upon the ground that she was a troublemaker and had willingly and indiscreetly done harm to her fellow employees in hampering their work whenever and wherever she could and by keeping a disturbance among them. When the letters and the petition were received by Petitioner, the officials of Petitioner, who had been aware for a considerable period of Mrs. Pruitt's activities and the

turmoil she was creating, decided to discharge her and did discharge her on December 27, 1960.

Records of Petitioner, completed and dated at the time of Mrs. Pruitt's discharge, show that she was discharged for incompatibility. The IWA has insisted and subsequently the N.L.R.B. has contended that Pruitt was discharged because she was not a member of Respondent Union. Petitioner has denied those allegations and continues to deny them and affirmatively states that they are false.

After Mrs. Pruitt's discharge, the IWA filed charges with the N.L.R.B. and subsequently a complaint was filed alleging in paragraph IX that:

> "Pacific did discharge and failed and refused and continues to fail and refuse to reinstate the employee referred to above (Mrs. Pruitt) in Paragraph VIII because said employee was not a member of Independent."

Petitioner answered the complaint denying the above allegation and affirmatively alleging:

> "That for some time prior to the 23rd day of December, 1960, Sally Pruitt, an employee of Pacific, engaged in conduct which caused tension, disturbance, dissension and loss of morale among the other employees of Pacific. That as a result of said conduct, Pacific did discharge Sally Pruitt as an employee of Pacific on or about the 23rd day of December, 1960, from employment at Pacific's plant at Dillard, Oregon. That the grounds and reasons for discharging said Sally Pruitt is solely her own conduct and the effect of that conduct upon the other employees."

With the foregoing allegation, denial, and affirmative allegation, the issue at the hearing was clearly drawn. There were other charges and allegations but the sole remaining issue was posed by the above quotations.

The Trial Examiner held that the Petitioner did discharge Mrs. Pruitt because she was not a member of Respondent Union and that that discharge was an unfair labor practice within the meaning of Section 8(a)(3) and Section 8(a)(1) of the National Labor Relations Act.

The Intermediate Report and Recommended Order of the Trial Examiner was adopted in its entirety as the Decision and Order of the National Labor Relations Board and the Petitioner has asked this Court to review that Decision and Order.

QUESTIONS INVOLVED

1. Whether there is substantial evidence upon the record considered as a whole to support the Findings of Fact and Conclusions of Law upon which the Decision and Order of the National Labor Relations Board was based?

2. Whether the National Labor Relations Board prejudiced the rights of Petitioner and erred in failing to reverse the ruling of the Trial Examiner in overruling Petitioner's objection to the introduction of evidence relative to a grievance committee matter involving Mrs. Pruitt and her brother-in-law, one Ray Pruitt?

3. Whether the National Labor Relations Board prejudiced the rights of Petitioner and erred in failing to reverse the ruling of the Trial Examiner sustaining the General Counsel's object to the introduction of certain testimony as to Mrs. Pruitt's statement and attitude toward her fellow employees.

SPECIFICATION OF ERROR, NUMBER ONE.

That the National Labor Relations Board erred in making and entering its Decision and Order and the whole thereof upon the ground that said Decision and Order and the whole thereof is unsupported by Conclusions of Law and Findings of Fact supported by substantial evidence upon the record considered as a whole and is contrary to law.

SPECIFICATION OF ERROR, NUMBER TWO.

That the National Labor Relations Board erred and prejudiced the rights of Petitioner in failing to reverse the ruling of the Trial Examiner overruling Petitioner's objection upon the grounds of irrelevancy and immateriality to the introduction of testimony pertaining to a grievance committee matter involving Mrs. Pruitt and her brother-in-law. (Transcript of Testimony, page 81, lines 4-25, page 82; page 83, lines 1-10.)

SPECIFICATION OF ERROR, NUMBER THREE.

That the National Labor Relations Board erred and prejudiced the rights of Petitioner in sustaining the Trial Examiner's ruling sustaining the General Counsel's objections upon the ground of immateriality and irrelevance to the introduction of evidence offered by Petitioner relative to derogatory statements and opinions by Mrs. Pruitt concerning her fellow workers. (Transcript of Testimony, page 196, lines 10-25; page 197; page 198; page 199; page 200, lines 1-9.)

SPECIFICATION OF ERROR, NUMBER FOUR.

That the National Labor Relations Board erred and prejudiced the rights of the Petitioner when it adopted and approved the following

Findings of Fact as found by the Trial Examiner in his Intermediate Report, hereinafter designated as "I.R.", because the same are not supported by substantial evidence on the record considered as a whole, and each of said findings is contrary to law and the whole of the evidence:

a. That "The issue presented is whether she was discharged by Respondent Company because of complaints by four fellow workers concerning her temperament and disposition coupled with threats that the four would resign if Pruitt remained as an employee or whether Respondent Union caused her discharge by cancelling her dues checkoff, ousting her from union membership for nonpayment of dues and by requesting the application of a union shop clause to terminate her employment because she was not a union member." (I.R. Page 2, lines 17-23.)

b. That "Respondent Union was certified in October, 1959, as the bargaining representative of approximately 16 employees in the Particle Board Division located in other buildings." (I.R. Page 2, lines 32-35.)

c. That "Forrest told Pruitt, as the latter testified, to 'keep your union dues paid, and there will be nothing come through this office.'". (I.R. Page 3, lines 37-39.)

d. That "Forrest admitted that he ascertained from Pruitt that her dues were current and told her that the contract required no more of her." (I.R. Page 3, lines 43-45.)

e. That "It may also be noted that Frashour testified he had contacted local counsel as well as a representative of an employer association concerning the application of Article III and was advised that this obligated the employer to discharge only a new employee for nonpayment of dues and was not applicable to existing employees." (I.R. Page 4, lines 33-36.)

f. That "As noted, Forrest had told Pruitt during November, that if her dues were paid, she would not have any employment problems." (I.R. Page 4, lines 48-50.)

g. That "All of these documents were received at the offices of Respondent Company on December 23, 1960, the very day on which the decision was made to terminate Pruitt. In fact, all were so stamped by Respondent Company." (I.R. Page 5, lines 5-7.)

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

1. [illegible]

2. [illegible]

3. [illegible]

4. [illegible]

5. [illegible]

6. [illegible]

h. That "An issue herein is the weight attributed by Respondent Company to certain documents submitted to it in connection with Pruitt." (I.R. Page 5, lines 1-2).

i. That "In view of the time taken to procure the signatures to the petition and the fact that the petition bears the date of December 13, I find as Pruitt and employee Alma Hanley testified, that December 12th is probably the correct date." (I.R. Page 5, lines 35-38).

j. That "This is consistent with the testimony of Vice President Pryce of Respondent Union that he had Wilson prepare for him, Pryce then circulated the petition, signed it himself and after all or substantially all of the employees in the unit signed, returned it to Wilson." (I.R. Page 6, lines 1-4).

k. That "Of course the testimony of Pryce and Wilson that they handled this matter as individuals is their own conclusion and moreover is not supported by fact." (I.R. Page 6, lines 8-10.)

l. That "Indeed, Forrest recognized the return address on the envelope which bore the initials I.P.B.E.I. as that of the Respondent Union." (I.R. Oage 6, lines 12-13).

m. That "I find in view of the history of the document that precisely the contrary inference is warranted. This is supported by the testimony of Bernard Meskill that union trustee Boucock made a motion at the December meeting that such a petition be circulated; the testimony of Alma Hanley that Boucock spoke at the meeting in favor of such petition; and the testimony of Meskill that it was voted on favorably at this meeting." (I.R. Page 6, lines 15-21).

n. That "The content of the petition clearly makes reference to the prior union action during the previous month when Respondent Company was asked by Respondent Union to invoke the union's security language of their contract and terminate Pruitt." (I.R. Page 6, lines 23-26).

o. That "The petition I find certainly put Respondent Company on notice that the signers, including Vice President Pryce, were seeking the discharge of Pruitt, a non-union member, whose non-union status had been forced upon her during the previous months by Respondent union, a matter with which Forrest was personally acquainted." (I.R. Page 6, lines 26-29-30).

p. That "I find that the petition constituted an act by Respondent Union and that Respondent Company did not regard it

otherwise." (I.R. Page 6, lines 30-31).

q. That "The record also discloses that on December 22, Pruitt learned that her December dues had not been checked off. In fact, one Young of Respondent Company's payroll department showed her the November letter from Respondent Union directing the cessation of her dues checkoff." (I.R. Page 7, lines 20-24).

r. That "It should be noted, however, this form was never delivered to Pruitt, and it is not clear from the record on which date the form was actually prepared." (I.R. Page 7, lines 26-28).

s. That "At 7:00 A.M. on December 27, Pruitt reported for work and discovered that her time card was not in the rack. She testified uncontrovertedly and I find that Longton called her into his office and informed her that she no longer worked there and handed her a paycheck. Pruitt asked the reason for her discharge and Longton replied, well, you know, there was a petition circulated and four letters, it is not your work in any way. Pruitt asked for a reason in writing and Longton referred her to Frashour." (I.R. Page 7, lines 30-36).

t. That "At 8 a.m., Pruitt visited Frashour in his office; no one else was present. According to Pruitt, she asked the reason for her discharge and Frashour stated "we had a petition circulated and we also have four letters... we have sixteen names on this petition." Pruitt asked to see the names and Frashour refused. She asked for a written statement of the reason for her discharge and he told her to check with him later in the day. She later testified that she had not brought up the subject of the petition and the letters but rather that Frashour, in giving a reason for the discharge, had stated "it's the confusion that we've had, and a petition and four letters that we have.... the four letters had more weight than the petition, but it was the letters ... the petition and the four letters." (I.R. Page 7, lines 38-48).

u. That "According to Pruitt, Frashour told her that he could not supply a written statement. She claimed that she needed it in order to seek work elsewhere and that she had never been discharged previously. Frashour replied that her work had been satisfactory but that "We have a petition and four letters. Ordinarily, a union affair, we don't get into it, but .... we have four letters ... These four letters come from four employees saying that they are going to quit if we don't get rid of you .... We have to get rid of you." Frashour promised to check with Forrest and ascertain what written document might be furnished Pruitt." (I.R. Page 7, lines 52-60)

v. That "Moreover the testimony of Forrest, the superior of Cook and Frashour, as previously noted, demonstrates that Forrest himself knew that the return address on the letter in which the petition had been enclosed was that of Respondent Union." (I.R. Page 8, lines 36-39).

w. That "As noted, the testimony of Pruitt attributing the statement to Longton, on the morning of December 23 that a petition had been circulated and that four letters had been received is undenied." (I.R. Page 8, lines 49-51).

x. That "Accordingly, I find that Pruitt was informed by Frashour on December 23 that the petition as well as the four letters were involved in the decision to terminate her." (I.R. Page 8, lines 57-59).

SPECIFICATION OF ERROR, NUMBER FIVE

The National Labor Relations Board erred and prejudiced rights of the Petitioner in adopting and approving the following portions of the Trial Examiner's Analysis and Conclusions as set forth in his Intermediate Report because the same are not supported by substantial evidence on the record considered as a whole and each of said Analysis and Conclusions is contrary to law and the whole of the evidence:

a. That "On November 25, Respondent Union wrote to Assistant Manager Frashour and asked that Pruitt be discharged under the union shop clause of the contract because of nonmembership in Respondent Union. President Forrest learned of the matter and advised Pruitt during November that she would have no employment problems if her dues were paid. Pruitt told Forrest that the Union had refused to accept her dues." (I.R. Page 9, lines 21-26).

b. That "The matter remained quiescent for some weeks until December 23 when both the petition and the four letters were received by Frashour. As found, a motion to prepare the petition had been made by a union trustee at a regular meeting of Respondent Union earlier that month; Secretary Wilson had prepared it; Vice President Pryce had circulated it; and Wilson had mailed it in. Indeed, Forrest recognized the return address and name as that of Respondent Union." (I.R. Page 9, lines 28-34).

c. That "Moreover, the petition made a clear reference to the November communication from Respondent Union in which Respondent Company was asked to terminate Pruitt under the union shop clause. It put Respondent Company on notice that the 16 signers, including Vice President Pryce, were requesting the discharge of Pruitt because of her non-membership in Respondent Union. More particularly, Forrest personally knew that her nonunion status was based upon her ouster during November by Respondent Union which had cancelled her dues deduction, a decision which was honored and carried out by Respondent Company, for the dues checkoff was not made from Pruitt's December check which she received on December 22." (I.R. Page 9, lines 36-45).

d. That "From the foregoing, it is readily clear that Pruitt was ousted from union membership for a reason other than nonpayment of dues and initiation fees. The cancellation of her dues deduction by Respondent Union can only be equated with a refusal to accept her dues. And, it is readily clear that in November Respondent Union attempted to cause her discharge when it submitted the November 25 letter requesting her discharge. It is also apparent that the petition, under union sponsorship, was also an attempt to cause her immediate discharge. That it related back to the previous month's demand is disclosed by its protest against a nonunion employee, Pruitt, working in a union shop and then asking that she be "immediately" removed from the employ of Respondent Company." (I.R. Page 9, lines 47-57.)

e. That "Initially, it is clear that neither Forrest nor Frashour took the trouble to investigage the circumstances of the writing of theseletters or to talk with the writers or for that matter with Pruitt." (I.R. Page 10, lines 3-6).

f. That "Neither Pryce nor Crites requested the ouster of Pruitt, but rather sought an alleviation of the situation, and, in fact, Crites admitted herein that she had little or no difficulty with Pruitt. Candelaria did give reasons for being unable to work with Pruitt and said, "If she continues to work in my department, I find it necessary to resign, as I have tried to do before." As noted, there is no evidence of the reason or circumstances surrounding the earlier occasion." (I.R. Page 10, lines 15-21).

g. That "This glosses over the fact that the petition was received from Respondent Union, the labor organization with which Respondent Company was under contract; that it was signed by 16 employees, in essence the entire unit; and that included among the signatures were the four letter writers

one of whom was the vice president of Respondent Union. In sum, Respondent Company had been under pressure from Respondent Union for over one month to fire Pruitt; was entirely familiar with what amounted to Respondent Union's refusal to accept her dues; and had received a petition bearing Respondent Union's return address and signed by 16 employees; which on its face related back to Pruitt's ouster from union membership. Yet, it would have one believe that it deemed all this to be of no moment in deciding to terminate Pruitt and that it then proceeded to rely upon the four letters alone. This contention I am unable to credit." (I.R. Page 10, lines 33-45).

h. That "It is apparent from the record that Pruitt did have a sharp tongue which had led to difficulties with co-workers, but that she was regarded an an exemplary employee and further that Respondent did not take up with her the question of the relationship with the other employees." (I.R. Page 10, lines 55-58).

i. That "Yet Respondent does not challenge Pruitt's competence as a tile grader. And it is interesting to note that after Pruitt's discharge, Pryce was assigned to other duties by Frashour and Longton because they, according to Pryce, concluded that the tile he cut was not satisfactory. I find, therefore, that Respondent Company could have readily ascertained that there was no true substance to Pryce's letter which was received on December 23 along with the other three. Moreover in view of the general pattern of all four, it hardly needs stating that a reasonable man, against the background of Respondent Union attempting to oust Pruitt from the plant, would be put on notice that something other than pure employee friction was involved." (I.R. Page 11, lines 14-24).

j. That "The testimony of Hanley impressed me as truthful, consistent with the entire pattern of events, including the reference earlier that morning to the petition by Longton in his conversation with Pruitt, and is therefore credited. In any event, however, it is my belief that the conclusions below, independently thereof, are amply supported by the other factors heretofore set forth." (I.R. Page 11, lines 46-51).

k. That "That Respondent Union under its union shop attempted to cause the discharge of Pruitt for a reason other than the nonpayment of dues and initiation fees has already been demonstrated. I am persuaded by the foregoing factors that Respondent Company was motivated, in part at least, by the petition received on December 23 which I find was a

union rather than a private demand for the discharge and that Respondent Company reasonably so regarded it." (I.R. Page 11, lines 53-59).

l. That "But, on this record, another factor played a part, namely the persistent efforts of Respondent Company to oust Pruitt from the employ of Respondent Company during November and December, culminating with the union sponsored petition which related back to Pruitt's ouster from union membership and the honoring by Respondent Company of the Union's instruction to cancel Pruitt's dues checkoff." (I.R. Page 12, lines 3-8).

m. That "I find that Respondent Union has engaged in unfair labor practices within the meaning of Section 8 (b) (2) of the Act by attempting to cause and by causing Respondent Company to discriminate against Sally Pruitt whose membership in Respondent Union was terminated for reasons other than failure to tender periodic dues and initiation fees, and that by such conduct Respondent Union has restrained and coerced employees in the exercise of the rights guaranteed by Section 7 of the Act within the meaning of Section 8 (b) (1) (A) of the Act." (I.R. Page 12, lines 23-30).

n. That "I find that Respondent Company has engaged in unfair labor practices within the meaning of Section 8 (a) (3) of the Act by terminating the employment of Sally Pruitt because of nonmembership in Respondent Union upon demand of the latter, although it knew that membership was denied her for reasons other than failure to tender periodic dues and initiation fees, thereby discriminating with respect to the hire and tenure of her employment in order to encourage membership in a labor organization. I further find that by the foregoing Respondent has interfered with, restrained and coerced employees in the exercise of rights guaranteed by Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of Section 8 (a) (1) thereof." (I.R. Page 12, lines 32-42).

o. That "The activities of Respondents, set forth in Section (n) above, occurring in connection with the operations of Respondent Company set forth in Section I above, have a close, intimate, and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof." (I.R. Page 14, lines 30-34).

SPECIFICATION OF ERROR, NUMBER SIX

That the National Labor Relations Board erred in failing to find, in accordance with all of the substantial evidence on the

record, that Sally Pruitt's testimony is patently false and unworthy of belief, including but not limited to the following specific portions of her testimony as contained in the Transcript of Testimony, hereinafter designated as "Tr.":

a. That, at her request, her foreman, Henry Longton, called all of the tile graders together in the lunchroom and relieved her of a "job" of instructing and assisting other graders.

b. That she mailed a copy of General Counsel's Exhibit #9 to Respondent Union prior to attending the meeting of the Respondent Union. (Tr. Page 148, lines 1-9).

c. That when she returned to work on December 27, 1960, she was told by her foreman, Longton, "well, you know, there was a petition circulated and four letters" .... That's it .... It's not your work in any way." (Tr. Page 52, lines 1-13).

d. That she was told by Mr. Frashour in response to her request for a reason for termination "well, you know Sally, we had a petition circulated and we also have four letters ... And, we have 16 names on the petition." (Tr. Page 153, lines 2-9.)

e. That upon the occasion of her visit to the company offices on the afternoon of December 27, 1960, she was told by Mr. Frashour, "We have a petition and four letters .... And ordinarily in a union affair, we don't get into it, but we have four letters .... And, these four letters came from four employees saying they are going to quit if we don't get rid of you." (Tr. Page 154, lines 14-25, and Page 155, line 1.)

f. That she never had any difficulties with one Lorena (Boots) Green. (Tr. Page 156, lines 11-14, Page 169, lines 6-7).

g. That she never had any difficulties with one Phyllis Candelaria. (Tr. Page 156, Lines 15-16).

h. That she never had any difficulties with one Mrs. Anita Ashley. (Tr. Page 156, lines 17-18).

i. That she never had any difficulties with one Mrs. Sylvia Crites. (Tr. Page 156, lines 19-20).

[illegible] Wood Dairy Products Corporation is accused, [illegible] and [illegible]
of Delaware Corporation for the [illegible] of the Fair-Trade Practices Act-
tions of the Secretary of Agriculture in the Department of Agriculture,
hereinafter designated as "Act."

4. That, at the request [illegible] Dairy Products Corporation [illegible] of the Fair Practices Department in the Secretary and [illegible] at [illegible] of Agriculture [illegible] Agriculture [illegible] Agriculture.

5. That the Secretary [illegible] Dairy Products Corporation [illegible] Secretary [illegible] Agriculture [illegible] Agriculture [illegible] Agriculture

j. That she had never talked to Mr. A. C. Roll. (Tr. Page 167, lines 22-23).

k. That she had never had any trouble with Robert Pryce. (Tr. Page 169, lines 4-5).

l. That she barely knew one Ben Kempke. (Tr. Page 172, lines 16-25).

m. That she never had trouble with anybody. (Tr. Page 162, lines 22-23).

n. That she had no conversation with Mrs. Ashley not more than a day or two before she was given a warning slip introduced into evidence as Respondent Company's Exhibit #11. (Tr. Page 317, lines 10-25; Page 318, lines 1-11).

o. That she had never threatened to beat anyone up. (Tr. Page 319, lines 1-3).

p. That she had never told any of her fellow employees to slow down in their work, or that they were grading too fast. (Tr. Page 319, lines 4-9).

q. That she had never asked Mr. Frashour on the day of her discharge about the petition or letters. (Tr. Page 319, lines 10-23).

r. That Mr. Frashour had told her that he would only give a recommendation over the phone but could not give her a recommendation in writing. (Tr. Page 155, lines 15-20).

SPECIFICATION OF ERROR, NUMBER SEVEN

That the National Labor Relations Board erred in failing to find, in accordance with all of the substantial evidence on the record, as follows:

a. That Bernard Meskill testified falsely when he testified that there was a mention made and voted upon at the December meeting of the Respondent Union that a petition be circulated to get Sally Pruitt dismissed. (Tr. Page 191, line 25; Page 192, lines 1-20)

b. That Alma Handley was prejudiced and her testimony was of doubtful value because she was admittedly a friend and neighbor of Pruitt. (Tr. Handley, page 180, et seq.)

c. That if Mrs. Woods, a friend of Pruitt, who accompanied her upon her visit to the company office after her discharge, had appeared and testified, her testimony would have been adverse and contrary to Pruitt's.

SUMMARY OF ARGUMENT

1. The real, and only, issue in this case is the Petitioner's motive in discharging Pruitt, and there is no substantial evidence, viewing the record as a whole, upon which it can be concluded that Petitioner discharged Mrs. Pruitt because she was not a member of the Respondent Union. To find that she was discharged because of her nonmembership in the Respondent Union, it is necessary to base an inference upon an inference, and this is not permissible even with administrative agencies.

2. Immaterial and irrelevant evidence, when properly objected to by a party, should not be admitted in evidence.

3. Evidence of the discharged employee's statements about and opinions of her fellow employees is relevant and material evidence when Petitioner is contending that she was discharged because of her conduct toward her fellow employees and her effect upon them and their work, and the refusal to consider material and relevant evidence is a denial of due process and this is true of impeaching evidence as well.

4. All of the items specified as errors in the Findings of Fact under Specification of Error, Number Four are errors which are demonstrably false and together they constitute almost totally erroneous findings.

5. All of the items specified under Assignment of Error Number Five are substantial errors in conclusions and constitute more an argumentative and partisan justification of the findings than a dispassionate and lucid determination of the pertinent facts.

6. All of the specifications of error set forth under Specifications of Error, Number Six, deal with the false testimony of Mrs. Pruitt, and, when considered collectively and cumulatively, demonstrate beyond any reasonable doubt the falsity of Mrs. Pruitt's testimony and her entire position.

7. The specifications of error contained in Specification of Error, Number Seven, are all errors found in the consideration by the Trial Examiner and the National Labor Relations Board of the testimony or lack of testimony by individual witnesses.

ARGUMENT

SPECIFICATION OF ERROR, NUMBER ONE

It is a general rule that where the wrongful discharge of an employee under the provisions of Section 8(a)(3) of the National Labor Relations Act is an issue, the critical question is the employer's "true motive."

N.L.R.B. vs. Ronney & Sons Furniture Mfg. Co., (CA 9, 1953), 206 F. (2d) 730;

Radio Officers' Union of Commercial Telegraphers, A.F.L. 6 vs. N.L.R.B., (1954), 74 S. Ct. 323.

N.L.R.B. vs. Longview Furniture Co., (CA 4, 1953), 206 F. (2d) 274.

Pittsburgh-Des Moines Steel Company vs. N.L.R.B., (CA 9, 1960), 284 F. (2d) 74.

The National Labor Relations Board may draw reasonable inferences from the facts in evidence but it cannot create inferences where there are no facts nor can it create an inference upon an inference.

N.L.R.B. vs. Kaiser Aluminum & Chemical Corp., (CA 9, 1954), 217 F. (2d) 366.

N.L.R.B. vs. Norfolk Shipbuilding & Drydock Corporation, (CCA4, 1940), 109 F. (2d) 128.

N.L.R.B. vs. Pick Mfg. Co., (CCA7, 1943), 135 F. (2d) 329.

The Courts of Appeal in reviewing orders of the National Labor Relations Board are restricted to determining whether or not the findings of fact of the Board are based upon substantial evidence viewing the record as a whole, and if they are so based, the findings are conclusive.

29 U.S.C. Sec. 160 (e) and Sec. 160 (f).

N.L.R.B. vs. Walton Manufacturing Company, (1962), 82 S.Ct. 853.

N.L.R.B. vs. Pittsburgh S. S. Co., (1951), 340 U.S. 498, 71 S.Ct. 453, 95 L.Ed. 479.

Universal Camera Corp. vs. N.L.R.B., (1951), 340 U.S. 474, 71 S.Ct. 456, 95 L.Ed. 456.

The reviewing court may set aside a decision of the National Labor Relations Board when it cannot conscientiously find that the evidence supporting the decision is substantial, when viewed in the light that the record in its entirety furnished, including the body of evidence opposed to the position of the Board.

N.L.R.B. vs. Walton Manufacturing Company, (1962), 82 S.Ct. 853.

Universal Camera Corp. vs. N.L.R.B., (1951), 340 U.S. 474, 71 S.Ct. 456, 95 L.Ed. 456.

"Substantial Evidence", within the rule that findings of the National Labor Relations Board must be supported by substantial evidence to be conclusive, is more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and it must be enough to justify, if the trial were by jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.

N.L.R.B. vs. Columbian Enameling & Stamping Co., (1939) 59 S.Ct. 501.

Jefferson Electric Co. vs. N.L.R.B. (CCA7, 1939), 102 F. (2d) 949.

American Smelting & Refining Co. vs. N.L.R.B., (CCA8, 1942), 126 F. (2d) 680.

The reviewing courts, in matters involving the review of National Labor Relations Board decisions and orders, ordinarily do not pass upon the credibility of the witnesses, but where material uncontradicted evidence has been ignored, or where evidence has been disregarded or eliminated by the casual expedient of discrediting an employer's witnesses, or where the testimony is incredible, the Trial Examiner's report and the Board's findings will not be accorded the presumption of correctness usually attributed to the trier of fact.

N.L.R.B. vs. Walton Manufacturing Company, (1962), 82 S.Ct. 853.

N.L.R.B. vs. F. W. Woolworth Co., (CA6, 1954), 214 F.(2d) 78.

N.L.R.B. vs. Miami Coca-Cola Bottling Company, (CA5, 1955), 222 F.(2d) 341.

N.L.R.B. vs. United Brass Works, Inc., (CA4, 1961), 287 F. (2d) 689.

Nothing in the National Labor Relations Act interferes with the normal exercise of an employer's right to select its employees or discharge them except the employer cannot have as his "true motive" the encouragement or discouragement of a union.

N.L.R.B. vs. Fansteel Metallurgical Corporation, (1939), 306 U.S. 240, 59 S.Ct. 490.

The sole issue in this case is framed by Paragraphs VIII and IX, page 3, of the General Counsel's Complaint and the Petitioner's denial thereof. Those paragraphs read as follows:

VIII

> On or about December 27, 1960, Pacific did discharge Sally Pruitt, employee of said Pacific, employed at the Dillard Plant.

IX

> Pacific did discharge and failed and refused and continues to fail and refuse to reinstate the employee referred to above in paragraph VIII because said employee was not a member of Independent.

Based upon the pleadings, as set forth above, the critical question and issue is whether the "true motive" of Petitioner in discharging Pruitt was "because said employee was not a member of Independent." N.L.R.B. vs. Ronney & Sons Furniture Mfg. Co., (CA 9, 1953), 206 F. (2d) 730.

If every bit of the evidence in this case is viewed in the light most favorable to the Board, there is still no substantial evidence upon which it could find that Mrs. Pruitt was discharged by Petitioner because she was not a member of Respondent Union. A fair and impartial reading of the Transcript of testimony and of the exhibits will reveal

[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]

a complete lack of substantial evidence tending to prove directly or by direct inference that Petitioner's motive was to discharge Mrs. Pruitt because she was not a member of Respondent Union.

It has been the position of the Petitioner from the very beginning of this matter that it would not discharge Mrs. Pruitt because she was not a member of Respondent Union, and the testimony of all of the responsible officers and supervisors subsequent to the discharge is directly to the effect that the discharge was because of Mrs. Pruitt's inability to get along with her fellow employees.

A detailed analysis of the Decision and Order of the National Labor Relations Board is contained in the Arguments below relating to Specifications of Error, Numbers Five, Six and Seven, and the court's attention is respectfully called to those arguments to avoid duplicating them at this point.

The Petitioner contends, and has always contended and its officers have so testified, that the culminating factors which activated its decision to discharge Pruitt were a petition to it signed by 16 employees, (General Counsel's Exhibit 5), and letters from four employees, (Petitioner's Exhibits 1A, 2A, 3A, and 4A.), and that these documents were preceded by a history of friction and discord in the plant, all caused by Pruitt.

The Trial Examiner and the National Labor Relations Board have taken and continue to take the position that the petition and the letters from the four employees constituted acts of the Respondent Union and that the Petitioner so regarded them and took action based

upon them.

There is no direct evidence that the petition or the letters were the act of the Respondent Union so the Board must infer that from other evidence, and in the fact of the testimony of every employee concerned, and that inference only takes the Board part way. Before it can take the next step and find that Petitioner discharged Pruitt because she was not a member of Respondent Union, the Board must infer, in the absence of direct evidence, that Petitioner knew the letters and petition were the act of the Respondent Union and acted upon them as such. This the Board cannot do. This court has held, in N.L.R.B. vs. Kaiser Aluminum & Chemical Corp., (CA9, 1954), 217 F. (2d) 366, that the Board may draw reasonable inferences from evidence but it cannot create inferences where there is no substantial evidence upon which they may be based, and an inference is not substantial evidence so an inference may not be erected upon an inference.

SPECIFICATION OF ERROR, NUMBER TWO

At the hearing, counsel for the Board endeavored to elicit testimony dealing with a grievance matter involving Mrs. Pruitt's brother-in-law, one Ray Pruitt. Petitioner objected upon the ground that the whole subject was irrelevant and immaterial. (Tr. page 81, lines 4-25; page 82; page 83, lines 1-10.) It is still the contention of Petitioner that such testimony was immaterial and irrelevant and that its introduction was prejudicial.

SPECIFICATION OF ERROR, NUMBER THREE

Petitioner offered testimony of statements and opinions of Pruitt about her fellow employees and the Examiner sustained the objection of counsel for the Board that it was immaterial and irrelevant. (Tr. page 196, lines 10-25; pages 197, 198, 199; page 200, lines 1-9.)

Petitioner is entitled to the testimony as to Mrs. Pruitt's statements and opinions concerning her fellow workers for two reasons: (1) In support of its contention that it discharged her because of the trouble she was causing among her co-workers; and (2) To impeach her testimony that she had no trouble with and liked and was liked by all of her fellow employees.

Refusal by the Board to receive and consider competent and material evidence offered by a party amounts to a denial of due process. (Donnelly Garment Co., vs. N.L.R.B., 123 F. 2d 215. Petitioner can conceive of no evidence more directly bearing upon Mrs. Pruitt's relationship with her fellow employees than testimony as to what she has said to disinterested third parties about them. Certainly the evidence offered was competent and material under any reasonable view of the situation.

The Supreme Court has said that findings of the Board cannot be said to have been fairly arrived at unless material evidence which might impeach is heard and weighed. (N.L.R.B. vs. Michigan Electric Co., 318 U.S. 9.

Mrs. Pruitt's testimony is replete with statements that she never had any trouble with her fellow employees, as a group, or individually. (Tr. Page 162, lines 22-23; page 156, lines 11-14; page 169, lines 6-7; page 156, lines 15-16; page 156, lines 17-20; page 169, lines 4-8; page 172, lines 1-3; page 319, lines 1-3.) What better way exists to reveal to the Board Mrs. Pruitt's falsity than through evidence of how she actually felt about her fellow employees? Certainly, the offered testimoney should have been admitted for purposes of impeachment, if for nothing else.

The Trial Examiner himself admitted, (Tr. page 199, lines 19-20) that there was evidence given by Mrs. Pruitt that she got along well with everyone, and yet, for reasons known but to himself, he chose to sustain the Counsel's objection and the Board adopted his position.

SPECIFICATION OF ERROR, NUMBER FOUR

The following portions of this brief deal with the individual specifications contained in this general specification and bear the same letter designation as contained in the specification. Petitioner feels that it is important for the Court to consider in some detail the various errors and omissions contained in the Trial Examiner's Intermediate Report which the Board adopted as its Decision and Order.

a. At the very inception of his Intermediate Report, the Trial Examiner attempted to and apparently did create an erroneous impression in the minds of the Board by the implication of the existence of issues on which each party has an equal burden of proof and an equal oar to

pull. This is not the case. The sole issue in this matter is, as stated in the complaint in paragraph IX page 3 and denied in the Answer, whether the Petitioner discharged and refused to reinstate one Sally Pruitt because she was not a member of Respondent Union. As far as the Petitioner's counsel has been able to determine, this is the sole issue in this matter. The burden of proving the charge complained of in the Complaint is upon the general counsel and he must prove it by a preponderance of the evidence. 29 U.S.C.A. Sec. 160 (c). The statement excepted to this exception clutters up the record and is an erroneous finding inasmuch as it does not state the true issue.

b. Petitioner excepts to the portion of this particular sentence wherein the Examiner says that the Respondent Union is a bargaining representative of approximately "16 employees" in the Particle Board Division. This is not true. There are 67 employees who are members of the Respondent Union. It is apparent from a consideration of the entire record that the transscript of evidence (Tr. Page 16, lines 10-11) is in error and that President Forrest actually said "60" instead of "16". This is theonly logical explanation for his reported statement. The Trial Examiner in several places in his Intermediate Report lays great stress upon the size of this Union as being a very small one with only 16 employees, whereas the Respondent Union actually is almost one-half as big as the AFL-CIO Local which has jurisdiction of the plywood operation. From the information contained in the transcript, the Court can satisfy itself that there were substantially more than 16 members of the union. In the first place, all of the signers of the petition, of whom there are 16, were members of the union. (Tr. Page 112, lines

9-12). None of the workers in the Particle Board Division outside of the Par-TILE Division signed the petition. (Tr. Page 110, lines 10-25, Page 11, lines 1-5.) No Pacqua employees signed the petition. (Tr. Page 110, lines 14-25; Page 11, lines 1-15.) In addition to that whole part of the operation, there were numerous individuals who testified at the hearing who were members of the Respondent Union and who did not sign the petition. Anita Ashley was a member of the Respondent Union and did not sign the petition. (Tr. Page 242, lines 10-12). Alma Hanley was a member of Respondent Union and did not sign the petition. (Tr. Page 183, line 3). Lee Wilson was a member of Respondent Union and did not sign the petition. (Tr. Page 74, lines 11-14). Dora Bell was a member of the Respondent Union and did not sign the petition. (Tr. Page 171, lines 4-5). Bernard Meskill was a member of Respondent Union and did not sign the petition. (Tr. Page 190, lines 4-6).

c. Petitioner excepts to the Examiner adopting Pruitt's version of the discussion between herself and Forrest. There is absolutely no basis on the record for taking her version of what transpired over that of Forrest. In fact, there is every reason not to accept Pruitt's version. Forrest testified that when Pruitt came to see him, she said that she had tendered her dues but the Respondent Union had not accepted them and he, Forrest, told her that as far as the Company was concerned, it would take no action on that item. (Tr. Page 40, lines 18-22, Page 41, lines 1-17). In one place in the record (Tr. Page 170, lines 5-8), Pruitt herself testified that Forrest said in this meeting "Well, you just go back and watch your p's and q's and keep your Union

dues paid and there will be nothing come through this office." It should be noted that this is a far different thing than as set forth and found by the Trial Examiner. "Watch your p's and q's changes the entire meaning of the statement to mean that she must do something more than merely keep her dues paid.

d. Petitioner excepts to the Trial Examiner's bald statement that"Forrest admitted...." and resents the implication that Forrest's testimony was wrung from him in some manner. The information in fact was developed during a routine examination and was freely given as appears from the transcript page 29, lines 9-23; page 40, lines 5-25; page 41, lines 1-17. It should be noted also that Mr. Forrest was the first witness who testified, and he testified affirmatively as to his meeting with Pruitt and the conversation that there took place.

e. Petitioner excepts to the finding given because it is a distortion of the testimony by Mr. Frashour. The significant and fair thing to be gained from Mr.Frashour's testimony in this regard is that when they contacted their local counsel and a representative of their employer's association, they were told to do nothing. The important thing is not the witness' recollection of the reasons given, if they were given, by counsel, but their advice, which as stated in the testimoney was to do nothing. (Tr. Page 278, lines 15-25; page 271, lines 1-11; page 287, lines 20-25; page 288, lines 1-8).

f. The exception taken by the Petitioner here is the same as that contained and for the same reasons set forth in d above.

g. Petitioner excepts to the distortion of the evidence contained in the Examiner 's statement. The Examiner attempts to imply that the

four letters, Respondent Company's Exhibit 1A - 4A and the petition, General Counsel's Exhibit 5, came to the attention of the Company simultaneously. This is not true. Henry Longton's testimony (Tr. Page 297, lines 21-25; page 298, lines 1-20) indicates that he received one letter on December 21, 1960, three other letters on December 22, 1960, and that he turned them in to Mr. Frashour on December 23, 1960. Longton never saw the petition until after the decision had been made to discharge Mrs. Pruitt or until after shehad left the employment of the Company. (Tr. Page 302, lines 5-25; page 303, lines 1-10).

h. Here again, as in a. above, the Examiner is by implication endeavoring to equate subsidiary conflicts in the evidence with the issue in the case. As stated in 1 (a) above, the issue in this matter is whether or not the Petitioner discharged Sally Pruitt because she was not a member of Respondent Union.

i. Petitioner has no exception to the actual finding that the meeting discussed in the exception was held on December 12, however, Petitioner objects to the implication given by Examiner that Pruitt is worthy of belief. There is sufficient other evidence in the record as indicated by the Examiner that the meeting in question probably took place prior to December 13, 1960.

j. All of the evidence in the record pertaining to the preparation, circulation and signing of the petition is contained in the following places in the transcript: Wilson, Page 103, lines 9-25; page 104, lines 1-20; Pryce, Page 124, lines 6-25; page 125, lines 1-25; Page 126, lines 1-5; page 132, lines 15-20; Hanley, Page 185, lines

11-25; page 186, lines 1-17; page 188, lines 6-11; Meskill, Page 94, lines 6-9; Mrs. Green, Page 203, lines 7-25; page 204, lines 1-5; page 216, lines 4-25; page 217, lines 1-25; Mrs. Candelaria, Page 229, lines 13-25; page 230, lines 1-8.

The Examiner implies that Mr. Pryce in the capacity as Vice-President of the Respondent Union personally took the petition in question, signed it first himself and then took it around to all of the employees in the union person by person, and by virtue of his position as a Vice-President forced all of them to sign it. A reading of the portions of the transcript set forth above show that the Examiner's conception is not correct. Circulation, if that is what it can be called, of the petition was very informal, and completely without coercion or solicitation. There is absolutely no evidence in the record of any kind that substantially all or even a majority of the employees in the unit signed the petition and the only evidence is that there were 16 signers. A search of the record from page 1 to page 324 will reveal no basis for a statement that substantially all of the employees in the unit signed the petition.

k. The Examiner's statement that the testimony of Pryce and Wilson that they were acting as individuals was only their conclusion, is an erroneous assumption of the facts. What more direct evidence can there be of the capacities in which a person is acting than his or her own direct testimony? The testimony of Pryce and Wilson is the only direct evidence upon the capacity in which they were acting with regard to the

petition. Any other evidence is purely circumstantial. The testimony of Pryce and Wilson that they were acting in their individual capacities is supported by other evidence as well.

The minutes of the Respondent Union's December meeting (General Counsel's Exhibit #11, and reproduced in part on page 5 of the Intermediate Report, lines 40-54, states the following with regard to the petiton: (Lines 51-54) "Secretary Lee Wilson suggested that it be handled as a personal problem effective to Sierra only since Pacqua was not affected. The Secretary was asked if he could draw up the petition for the Sierra group." This is a far different thing than the Examiner says. It is apparent from the minutes that Mr. Wilson was to prepare a petition for a group of employees who are acting on a "personal problem". The Examiner's construction of the minutes appears to be an attempt to rationalize a decision already reached in the mind of the Examiner.

A careful, impartial, and unbiased reading of the petition reveals that the signers of the petition who are employees of Sierra Lumber Company and also union members of the Respondent Union in good standing are protesting against a nonunion employee working in a union shop and taking precedence over union members. The gravamen of the petition is that portion where the employees request that the company act immediately to remove the designated employee from employment, not upon the grounds that she is a nonunion employee but upon the grounds

that she is a troublemaker and has willingly and indiscreetly done harm to her fellow employees in hampering their work whenever and wherever she could and by keeping a disturbance among the employees. There is no request in the entire petition for the Petitioner to discharge the employee because she was not a member of the Respondent Union.

The fact that Robert Pryce was a Vice-President of the Respondent Union apparently and naturally was of little or no importance to anyone involved until the Examiner chose to blow it up out of all proportion to its importance. If the petition were in fact a union act and was circulated by the union officials as such, it would have been relatively simple to designate it in that manner and to have the President and Secretary of the Union execute it in their official capacities. Obviously the individual to whom the employees would turn for the preparation of any such document would be Secretary of their union. There is ample evidence to indicate that Mrs. Pruitt's conduct had created hard feelings between herself and Mr. Pryce and that Mr. Pryce was motivated by his personal feelings in his belief as to her conduct instead of any motivations which might have arisen by virtue of his position in the union. (Tr. Page 126, lines 14-25; page 127, lines 1-12; page 132, lines 21-24; page 133, lines 1-10.)

1. Again the Examiner has twisted Mr. Forrests' testimony out of all resemblance to its true meaning and apparently the Examiner attaches great importance to this item because he repeats it several times. Mr. Forrests' testimony, (Tr. Page 26, lines 24-25; page 27,

lines 1-8) shows that the general counsel introduced an exhibit which was the envelope containing the petition and that on the envelope were the letters "I.P.B.E.I. CV Route, Box 375". The counsel then asked Mr. Forrest if he knew what those initials stood for and he replied that he could guess what they stood for. In answer to the next question as to what his guess would be, he answered that his guess would be that "it must be Independent Particle Board Employees, Inc. or something." From this brief statement, the Examiner contends that Mr. Forrest examined the envelope in which the petition was contained at the time of its arrival, that he immediately recognized the return address on the envelope and knew that it was that of the Respondent Union, and that from that he inferred that the petition contained in that envelope was a petition from the Respondent Union itself. This is ridiculous on its face, and contrary to any reasonable interpretation of the testimony.

m. The matter excepted to under this exception is an instance of the Examiner's ability in picking and selecting certain portions of testimony or evidence and believing it even when it is inherently unbelievable and incredible and excluding from his consideration contradictory and more believable evidence. The minutes of the December meeting of Respondent Union (General Counsel's Exhibit #11) indicate that no such motion to prepare a petition was ever made let alone by union trustee Boucock. Counsel's witness, Alma Hanley, said that she was at the December union meeting (Tr. Page 183, lines 17-25; page 184, lines 1-4, lines 18-25; page 185, lines 1-10; page 188, lines 1-25) and

remembered no such motion nor any vote upon such a motion. Mrs. Hanley is the same witness the Examiner says is truthful and whose testimony is consistent with entire pattern of events. (I.R. Page 11, lines 46-49.) It appears odd to Petitioner that this consistent, truthful witness is believed in other respects but when she is supported by minutes of the meeting and the testimony of several other witnesses, her testimony is not believed while that of Mr. Meskill, who was the sole witness to testify as to the making and voting upon such a motion is believed. Petitioner submits that all of the weight of the evidence is contrary to Meskill's testimony and that the only substantial evidence is that there was no such motion and no such vote.

Further, in this regard, Petitioner wishes to call to the attention of the Court a fact which the Examiner has insisted on overlooking. That is the fact that the Respondent Union in this case is a corporation and not, as is usually the case, an association. Evidence concerning its proceedings would appear to be governed by the same rules of evidence as govern the proceedings of other corporations. If that is true, and Petitioner sees no reason to believe otherwise, the best evidence as to what went on at a meeting of the members of the corporation is the minutes of the corporation for that particular meeting. In fact, the law is that the minutes of the meeting are the only evidence admissible to prove the actions at the meeting. (Denver & R.G.R. Co. vs. Arizona and C.R. Co., 233 U.S. 601. This is obviously based upon the greater reliability of the minutes. It is submitted that the minutes of the December meeting of Respondent Union are of

greater reliability than the testimony of a single witness (Meskill) whose recollection is entirely different from that of any other person in attendance who testified at the hearing. In other portions of his Report, the Trial Examiner chooses to rely upon the same minutes and the minutes of other meetings. Petitioner is unable to understand the distinction which the Examiner draws between the minutes of the various meetings and his varying reliance thereon.

n. The Examiner's statement that the content of the petition clearly makes reference to the prior union action is a blatant misstatement of the content of the petition, (General Counsel's Exhibit #5). Petitioner has read and reread and read again the contents of the petition and can find no clear reference to any prior union action. Petitioner submits that this is a complete distortion of the meaning of the petition.

o. The Examiner's finding is at complete variance with the facts as revealed by the evidence. There is no evidence at all that any of the people in positions of responsibility with the Petitioner knew that Pryce was the Vice-President or in fact that he was any official of the Respondent Union. The only thing that can be found from the evidence as far as this item is concerned is that Petitioner knew from the petition that those employees signing that petition requested the company to act immediately to remove the employee on the grounds that she was a troublemaker and had willingly and indiscreetly done harm to her fellow employees in hampering their work whenever and wherever she could and by keeping a disturbance among them. Responsible officials of

Petitioner knew that the petition referred to Pruitt and have never claimed otherwise.

p. This finding is wholly without basis in any substantial evidence, in fact, all of the evidence is that the Petitioner regarded the petition as the act of the individual employees who signed the same. This particular tortuous reasoning of the Examiner involves the construction of one inference and the piling of a further inference upon that inference. From certain facts in evidence, the Examiner chooses to raise a questionable inference that the petition was an act of the Respondent Union. From that inference and without evidence the Examiner attempts to create a further inference that the Petitioner knew that the petition was an act of the Respondent Union. This is improper and clearly erroneous.

q. Petitioner excepts to the Trial Examiner accepting Mrs. Pruitt's word on this matter when she testified (Tr. Page 149, lines 14-19) that she had her receipt. The receipt itself, properly signed by Petitioner would have been the best evidence of this matter and was not offered, but the Examiner is again believing Mrs. Pruitt's unsupported testimony.

r. The matter here excepted to is a complete misstatement of the record, which is clear, and is a gratuitous insult to Mr. Frashour. (Tr. Page 274, lines 4-15). Mr.Frashour testified that Petitioner's Exhibit #6, the termination slip, was made out by Mr. Longton and countersigned by Mr. Frashour terminating Sally Pruitt on December 27, 1960, for incapability. The Examiner asked Mr. Frashour if

December 27, 1960, was the date the slip was actually made out and Mr. Frashour replied "that is the date the termination was made out, yes." It appears to Petitioner that nothing could be clearer than that the termination slip was made out December 27, 1960.

s. The Trial Examiner is correct when he states that Mrs. Pruitt's testimony with regard to her conference with Longton after her discharge is uncontroverted if he means that Longton himself was not asked concerning that matter. A search of the record will reveal that Counsel for Petitioner failed to ask Mr. Longton concerning that conference. However, there is ample evidence to cast doubt upon Pruitt's statement aside from her general untruthfulness. Longton and all of the other girls on the shift with the exclusion of Mrs. Pruitt's friend and neighbor, Hanley, recalled that at the meeting on the same day of Mrs. Pruitt's discharge, they were told by Mr. Longton that she was discharged because of thefact she could not get along with the other employees and none of them could remember any discussion at that time of any petition.

Mr. Longton likewise testified that at this same meeting he advised the other employees that Mrs. Pruitt had been discharged because she could not get along with the other employees, and nothing was said about a petition. Longton further testified that he did not see the petition until Mrs. Pruitt was discharged so the probability is great that he would not have mentioned the petition to her. Once again the Examiner chooses to believe the unsupported word of Mrs. Pruitt.

t. Petitioner objects to the selection by the Examiner of Mrs. Pruitt's trstimony with regard to the conference with Mr. Frashour. There is a direct conflict in the testimony between Mr. Frashour and Mrs. Pruitt as to what transpired at the meetings and Mr. Frashour's testimony is supported in its essential elements by that of Mr. Cooke. Mrs. Pruitt was thoughtful enough to bring along with her to the meeting with Mr. Frashour a witness so that any statements made might be corroborated by someone besides herself. However, it should be noted that this witness, a Mrs. Woods failed to appear at the trial and we can only assume that the testimony of Mrs. Woods would have been adverse to that of Mrs. Pruitt.

Long experience has resulted in the universally accepted doctrine that where it is within the power of one party to produce evidence, including a witness, and that evidence or witness is not introduced, there is an inference that the evidence or the witness' testimony would be unfavorable. Wetmore vs. Rymer, 169 U.S. 115; Culbertson vs. The Southern Belle, 18 U.S. 584.

u. Here again the Examiner has accepted as the gospel truth the testimony of Pruitt even though it is opposed by two reputable representatives of the company.

v. Once more the Examiner is distorting Mr. Forrest's testimony out of all resemblance to thetruth. The Court need only examine Mr. Forrest's own testimony with regard to the return address. (Tr. Page 26, lines 24-25; Page 27, lines 1-8).

w. Here again the Trial Examiner in a biased, partisan attempt states that Mrs. Pruitt's testimony was undenied. It was undenied as stated above in support of Exception s for the simple reason that Mr. Longton was not asked. It is denied by other evidence much stronger than that of Pruitt whose testimony in almost all respects is inherently unbelievable and untruthful.

x. There is no basis in truth to support this finding of the Examiner other than an unswerving partisanship in his advocacy of Mrs. Pruitt.

SPECIFICATION OF ERROR, NUMBER FIVE

The following portion of this brief is an analysis, item by item, of the erroneous and prejudicial portions of the Trial Examiner's Analysis and Conclusions as adopted by the National Labor Relations Board and specified as error in the Specifications of Error. The letters correspond to the letters of the subparagraphs in the Specifications.

a. Petitioner objects to this portion of the analysis and conclusion by the Examiner because it is a result of a misconception on the part of the Examiner as to President Forrest's statements. It is true that Mrs. Pruitt advised President Forrest that she had tendered her dues and that the Union had refused to accept her dues. President Forrest, according to his testimony in two separate places (Tr. Page 40, lines 18-22, and Page 29, lines 19-23) told Mrs. Pruitt that the Company would take no action against her based solely upon her failure to pay dues if she had tendered them. Mrs. Pruitt, in her own testimony,

(Tr. Page 170, lines 5-8), stated that Mr. Forrest had told her to keep her Union dues paid and "watch your p's and q's."

b. Petitioner objects to the statement by the Examiner that the matter remained quiescent until December 23. This is not true. Mr. Longton, Mrs. Pruitt's immediate supervisor and her foreman, received one letter from an employee on December 21, 1960, three others on December 22, 1960. He turned these letters in to Mr. Frashour, his immediate superior, on December23, 1960, on which date Mr. Frashour also received the petition. Two weeks prior to that, Mr. Longton had conferences with both Mrs. Pruitt and Mrs. Candelaria and Mrs. Green relative to the trouble and dispute between them arising out of Mrs. Pruitt's conduct. (Tr. Page 303, lines 16-25; page 304, lines 1-10). At least twice in November or early December, Mr. Longton received reports of furthertrouble created by Pruitt. (Tr. Page 294, lines 3-25; page 295, lines 1-4; lines 23-25; page 296, lines 1-5).

The Examiner's repeated and erroneous statement that the motion to prepare the petition had been made by a union trustee at a regular meeting of Respondent Union has been amply covered above and its falsity laid bare. Petitioner has covered amply the true version of the preparation, circulation and mailing of the petition in the preceding portions of this brief. One more time the Examiner has attempted to mislead concerning Mr. Forrest's recognition of the Respondent Union's return address. This likewise has been covered before.

c. Every item covered by Petitioner's exception in this paragraph has been covered amply above, but it will restate some of the more obvious

matters concerning the Trial Examiner's errors in this particular. The petition makes no clear reference, and in fact makes no reference, to the November communication between Respondent Union and the Petitioner. The petition does not request the discharge of Pruitt because of her nonmembership in the Respondent Union. The Petitioner did not know Mr. Pryce's position with the Respondent Union. The contract between the Respondent Union and the Petitioner required that the dues withholding be cancelled. The only evidence that the dues were not deducted from Mrs. Pruitt's December check is her own testimony which Petitioner has demonstrated is not worthy of belief.

d. Unquestionably, Mrs. Pruitt was ousted from Union membership for a reason other than nonpayment of dues. It is likewise clear from all of the evidence that the petition was not under Union sponsorship but was an attempt by those employees working with her in the same portion of the shop to have her discharged because of the trouble that she was creating. Once again, in the last sentence of this paragraph the Trial Examiner has attempted to mislead with regard to the petition relating back to a previous demand for discharge of Mrs. Pruitt. It is beyond the comprehension of Petitioner how the Trial Examiner can persist in this and the other misconceptions repeated over and over again when they are virtually unsupported by any evidence.

e. There is ample evidence on the record that both Mr. Forrest and Mr. Frashour already knew of the trouble that Mrs. Pruitt was causing among her fellow workers and there was no further need for any investigation. Her immediate supervisor, Mr. Longton, concurred with

Mr. Frashour and Mr. Forrest in her discharge.

f. A fair and impartial reading of Petitioner's Exhibits 2a and 3a will convince any unbiased reader that the authors are asking for the discharge of Mrs. Pruitt. What other implication can be drawn from these documents? The implications made by the Trial Examiner and emphasized by underlining only emphasizes his own bias. What the Trial Examiner should have noticed, if he noticed anything at all during the hearing, was that this witness was a very withdrawn, quiet and meek person who wouldhave no trouble with anybody. (Tr. Page 265, lines 2-8). Mr. Longton testified at some length about the troubles in his department and did testify that at least two of the girls working there mentioned they possibly would quit unless Sally stopped causing trouble. (Tr. Page 294, lines 16-18).

g. The matter excepted to under this exception is largely a resume by the Trial Examiner of his prior misconceptions, and a restatement of his erroneous conclusions which he drew therefrom. He states as a fact that the petition was received from Respondent Union when the only evidence regarding this is that it was in an envelope which Mr. Wilson had placed the initials of the Respondent Union and his own home address as the return address. The Examiner states again that the petition was signed by 16 employees which he chooses to state is in essence the entire union. This has been covered above and as shown in detail is entirely false. He emphasizes again that one of the signers was a Vice-President of the Union. Only he chooses to say "the Vice-President. The evidence indicates no pressure from Respondent Union

upon Petitioner to fire Mrs. Pruitt and a search of the entire transcript can reveal no such pressure, subsequent to the letter of November 5th which was ignored, and again he erroneously states that the petition by its own terms related back to Mrs. Pruitt's expulsion from Union membership. The Examiner persists in making misstatements of fact and from those misstatements of fact, he draws erroneous, biased and partisan conclusions.

h. Petitioner is grateful that the Examiner concedes that Mrs. Pruitt did have a sharp tongue and that she had some difficulties with her coworkers. However, Petitioner wishes to make clear that the only manner in which she was regarded as an exemplary employee was that her tile grading work was done well technically. In this connection attention is called to theincidents of Mrs. Pruitt's vulgar and profane conduct in the lunchroom and toward her fellow employees.

i. In this instance the Examiner, without any particular reason, chooses gratuitously to malign Mr. Pryce and by indirection indicate that perhaps Mrs. Pruitt was correct when she was making trouble for him over his production of tile. If the Examiner had read Mr. Pryce's testimony and transcript or had listened carefully when he testified, he would have discerned the true state of facts concerning Mr. Pryce's shift from the tile cutting machine. The transcript reveals, and Mr. Pryce testified, that he was moved from tile cutting sometime in April of 1961 and that he was moved because his superiors believed that he was not producting good, perfect tile on the new tile machine which he only operated for a short time. He was not moved from his old machine. (Tr. Page 128, lines 4-25). His finding as to what Petitioner

could have ascertained as to Pryce's letter is completely erroneous and the Examiner's statement of what a reasonable man would have notice of is based upon the Examiner's own biased, partisan and unjudicial reasoning.

j. This is an example of the Examiner choosing to believe Mrs. Hanley in one respect when it sustains the position he has previously taken and disregards her testimony when it is in opposition to that position. As stated above, Hanley is theonly witness that testified as to any reference by Mr. Longton to any petition. Her testimony is opposed by the testimony of the three other girls present at that meeting and by the testimony of Mr. Longton himself as to what he said at the meeting. (Tr. Mrs. Green, Page 213, lines 21-25, page 214, lines 1-14; Mrs. Ashley, Page 248, lines 10-20, Page 250, lines 13-25; Mrs. Crites, Page 259, lines 14-18; Page 260, lines 5-12; Mr. Longton, Page 301, lines 13-25, Page 302, line 1.) And the Examiner's statement that his conclusions are amply supported by other factors is patently wrong.

k. The most that can be said for the Trial Examiner's conclusion in the first sentence excepted to in this exception is that the inference can be drawn from the evidence that the Respondent Union in its letter of November 5th did attempt to cause the discharge of Mrs. Pruitt because of her expulsion from the Respondent Union. However, evidence further indicates that this was completely ignored by Petitioner and that thereafter the Respondent Union took no further action in this regard. Petitioner does not contend and could not contend that the petition received from 16 of its employees played no part in the decision to

discharge Mrs. Pruitt. Obviously it did, although, as all of Petitioner's officials testified, it played a very, very minor part. The statement by the Examiner that it was a Respondent Union demand and that Petitioner so regarded it is absolutely without basis in fact.

l. This conclusion excepted to is a rehash of the same old misconceptions, misstatements and erroneous reasoning on the part of the Trial Examiner, and has been amply covered above.

m. It might be that it might be considered from the evidence that Respondent Union did attempt to cause the discharge of Mrs. Pruitt in its letter of November 5 to Petitioner, but there is no evidence that the letter caused the discharge or that it played any part therein, in fact, the evidence is uncontrovertedly to the effect that the November 5th letter was ignored.

n. Every finding in this paragraph is erroneous and clearly against any reasonable construction of thefacts and is unsupported by any substantial evidence.

o. The Petitioner realizes that this is in effect only a formal finding but Petitioner excepts to this finding as well.

SPECIFICATION OF ERROR, NUMBER SIX

This portion of the brief deals almost entirely with the credibility of Mrs. Pruitt, and the subparagraphs below are lettered in accordance with the corresponding subparagraphs in the Specifications of Error.

Petitioner acknowledges that it is the general rule that reviewing courts, in matters of this kind, do not pass upon the credibility of

the witnesses, but Petitioner believes that Mrs. Pruitt's testimony is so incredible as to be beyond belief in many respects and that her whole testimony is not worthy of belief and should be viewed with suspicion.

N.L.R.B. vs. Walton Manufacturing Company, (1962, 82 S.Ct. 853.

N.L.R.B. vs. F. W. Woolworth Co., (CA 6, 1954), 214 F. (2d) 78.

N.L.R.B. vs. Miami Coca-Cola Bottling Company, (CA 5, 1955), 222 F. (2d) 341.

N.L.R.B. vs. United Brass Works, Inc., (CA 4, 1961), 287 F. (2d) 689.

The discussion below will be as brief as possible and in most instances will only direct the Court to the citation in the transcript where Mrs. Pruitt has been given the lie direct or by logical implication. There are many other matters upon which she testified falsely as well.

a. Testimony of Henry Longton, (Tr. Page 299, lines 14-25; Page 300, lines 1-5) and Anita Ashley (Tr. Page 252, lines 9-18) reveal a meeting considerably different than that testified to by Mrs. Pruitt. According to Mrs. Pruitt, she requested Mr. Longton to call the tile graders together and advise them that she was being relieved of her job of instructing and assisting the other graders. According to Mr. Longton, he called the girls together because there had been complaints about the trouble Mrs. Pruitt was causing and he told them that visiting back and forth had to be stopped, that they were supposed to be working, and that if they had any questions pertaining to their tile

grading or what they should do, they were to bring it directly to Longton. Incidentally, he asked them to stop taking any questions to Mrs. Pruitt. Mr. Longton's version is borne out by Mrs. Ashley's testimony and it should be remembered that Mrs. Ashley was a friend of Mrs. Pruitt.

b. The evidence in regard to this letter reveals that Mrs. Pruitt was very tricky and deceitful in the manner in which she gave her testimony and her testimony was a clear attempt to deceive the Examiner. Mrs. Pruitt testified, in response to a question as to what date had she mailed the letter is: "I mailed this on a Saturday and when I went to my hearing I handed Lee Wilson a copy of this to be read...." The meeting was on Sunday and that fact was in evidence. If Mrs. Pruitt had not been cross examined closely on this, the only inference that anyone could draw would be that she mailed the notice the Saturday before the meeting. However, upon cross examination, (Tr. Page 156, lines 1-25; Page 157, lines 1-25; Page 158, lines 1-25; Page 159, lines 1-24) a different story entirely was wrung from Mrs. Pruitt and she retreated only when she realized that there was a post-marked envelope giving the lie to her statement. It was apparent to those in the courtroom at the time of the hearing and it is still apparent after reading the testimony, that she was trapped in an out-right falsehood and was doing her best to crawfish out of it. It finally developed that the letter was not mailed on the day before the hearing which was a Saturday but in fact it was mailed on the 23rd of November which was a Wednesday. Mr. Wilson testified that even at the

Union hearing upon her expulsion called a "trial", Mrs. Pruitt had stated that she had mailed a letter requesting that the trial be delayed. (Tr. Page 96, lines 2-13.) Is it any wonder Petitioner claims she is unworthy of belief.

c. As stated in the brief above, Mr. Longton unfortunately was not asked about this past discharge meeting with Mrs. Pruitt. However, it is inconceivable that he would have given the petition as a basis for the discharge when he had not received the petition, he had recommended a discharge independent of any petition, and he did not see the petition until after her discharge.

d. An examination of Mrs. Pruitt's testimony with regard to her brief meeting with Mr. Longton on the morning of the 27th and her morning and afternoon meetings with Mr. Frashour on that same date reveals the odd fact that in each of those three instances, Mr. Frashour and Mr. Longton stated almost exactly the same thing and that they volunteered the information that they had a petition and four letters, and she did not ask about the petition and letters in the first instance, although she certainly had been informed of their existence by Ashley and Hanley. Then later after sitting through the balance of the NLRB hearing on May 16th and 17th, 1961, in Roseburg, Oregon, Mrs. Pruitt even stated that Mr. Frashour had said the same thing when she went back to see him on the second day. (Tr. Page 320, lines 2-5). Petitioner submits that her testimony in regard to these matters is inherently unbelievable and that the testimony of Mr. Frashour (Tr. Page 276, lines 1-25; page 277, lines 1-25; page 278, lines 1-25; page 279, lines 1-7); and that of Mr.

Cooke (Tr. Page 312, lines 24-25; page 313, lines 1-15; page 314, lines 18-25; page 315, lines 1-25) is much more logical and worthy of belief and is a true statement of what transpired at the various meetings.

e. This exception is covered in the discussion in the preceding paragraph.

f. Mrs. Green very clearly disagrees with Mrs. Pruitt as to whether or not the two of them ever had any difficulties. (Tr. Page 204, lines 8-23; page 205, lines 11-25; page 206, lines 1-7; page 220, lines 16-25; page 221, lines 1-25; page 222, lines 1-10; page 224, lines 7-21; page 226, lines 1-18).

g. Everyone but Mrs. Pruitt was evidently aware that she was having difficulties with Phyllis Candelaria. (Mrs. Green Tr. Page 207, lines 22-25; page 208, lines 1-15; page 218, lines 8-18) Candelaria (Tr. Page 230, lines 9-25; page 231, lines 1-25; page 232, lines 1-11; page 236, lines 7-23). Ashley (Tr. Page 244, lines 17-25. Crites (Tr. Page 257, lines 7-25; page 258, lines 1-12).

h. Mrs. Green and Mrs. Ashley both testified concerning the troubles Mrs. Pruitt had had with Mrs. Ashley (Tr. Mrs. Green Page 208, lines 15-24; page 218, lines 18-21; page 219, lines 20-25; page 220, lines 1-14.) Mrs. Ashley, Page 244, lines 1-15.

i. Mrs. Crites, who is a very meek, mild little woman testified regarding her difficulties with Mrs. Pruitt. (Tr. Page 256, lines 18-25).

j. This is perhaps the most patent falsehood of them all. Mr. A. C. Roll represented Mrs. Pruitt in the hearing before the Oregon

State Unemployment Compensation Commission. Mr. Roll as the counsel for the Local IWA Union prepared the charges and of necessity discussed them with Mrs. Pruitt. Her statement that she had never talked to Mr. Roll is utterly beyond belief.

k. The fact that she had trouble with Robert Pryce is evident from his letter and from his entire testimony.

l. Mrs. Pruitt's statement that she barely knew Ben Kempke must come as a surprise to everyone at Pacific Plywood. According to Mr. Longton, Mrs. Green and Mrs. Ashley, Kempke and Mrs. Pruitt were in a wild argument at least on Mrs. Pruitt's part, and her statement that she merely knew him passes comprehension. (Tr. Longton, Page 295, lines 9-22; Green, Page 207, lines 1-21; Ashley, Page 249, lines 10-21).

m. It appears that Petitioner is wrong in labeling one of the foregoing the most patent falsehood because this one almost certainly is in a wilder realm of fancy. (Tr. Page 322, lines 2-14).

n. Mrs. Pruitt's denial of a conversation with Mrs. Ashley at the time Mrs. Pruitt was given a warning slip (Petitioner's Exhibit #11) is contradicted explicitly by the testimony of the other two persons involved, Mr. Longton and Mrs. Ashley. (Tr. Longton, Page 300, lines 6-25; page 301, lines 1-12; page 308, lines 5-15; Ashley, page 252, lines 2-25; page 253, lines 1-25. Their testimony reveals a quite extensive conversation. The reason why Mrs. Pruitt would deny this is not apparent except perhaps that she has become an habitually false witness.

o. While it may be true that Mrs. Pruitt never threatened to beat Mrs. Candelaria up in Mrs. Candelaria's presence, nevertheless she

did tell Mrs. Ashley that she would like to and Mrs. Ashley believed that she would. (Tr. Page 245, lines 3-15; page 246, lines 4-7).

p. Two of Mrs. Pruitt's fellow employees, one of them a friend of hers, stated that she told them to slow down in their work, that they were grading too fast and would have to go home if they ran out of tile. (Tr. Candelaria, Page 232, lines 4-25; page 233, lines 1-20; Ashley, Page 248, lines 6-9; page 249, lines 23-25; page 250, lines 1-12).

q. This exception is covered in one of the preceding exceptions.

r. For no apparent reason Mrs. Pruitt testified that Mr. Frashour told her that he would not give her a recommendation in writing because it was against Company policy but that he would be glad to give her a recommendation over thephone. Mr. Cooke testified that Frashour said that he would write a letter of recommendation to a particular employer, that is addressed to a specific party, but that he would not write a letter, "To Whom It May Concern". (Tr. Page 314, lines 1-11) Mr. Frashour's testimony concerning the letter of recommendation was similar to that of Mr. Cooke. (Tr. Page 277, lines 10-16; page 280, lines 15-25; page 281, lines 1-3).

SPECIFICATION OF ERROR, NUMBER SEVEN

The three subparagraphs of this Specification are covered herein by the following three paragraphs bearing the same letters as the specifications to which they apply.

a. It is apparent from the transcript of the proceedings that Mr. Meskill, to put it charitably, testified falsely when he testified that there was a motion made and voted upon at the December meeting of

Respondent Union that a petition be circulated to get Mrs. Pruitt dismissed. His testimony is opposed by the minutes of the meeting, (General Counsel's Exhibit #11), which revealed no such motion or vote. The rules of evidence and the construction thereof concerning corporate minutes are covered above in this brief. Mrs. Hanley, whose testimony the Examiner lauds as being truthful and consistent, opposes Mr. Meskill in his recollection of the meeting (Tr. Page 183, lines 12-25; page 185, lines 1-10). Mrs. Green likewise had a different recollection of that meeting (Tr. Page 201, lines 22-25; page 203, lines 1-6). Of course, Mr. Wilson who prepared the minutes of the meeting also had a different recollection. Yet the Trial Examiner would have the Board believe that Mr. Meskill's testimony was believable. Petitioner submits that his testimony is inherently unbelievable.

b. It was apparent from all the testimony of Mrs. Hanley that she was prejudiced and biased in favor of her friend and neighbor, Mrs. Pruitt. Therefore, her testimony should be viewed with caution. This the Trial Examiner did not do with the single exception when he chose to believe Mr. Meskill rather than Mrs. Hanley concerning the December meeting of the Respondent Union.

c. It is the contention of the Petitioner that the Examiner must find that if Mrs. Woods had appeared and testified, her testimony would have been adverse to that of Mrs. Pruitt. In the latter part of the proceedings, the transcript reveals that the General Counsel claimed to have Mrs. Woods under subpoena and yet he waived the right to proceed therewith. The wisdom of the presumption that the evidence of

Mrs. Woods would be adverse to Mrs. Pruitt, is based upon sound and age-old reasoning. We must assume that Mrs. Woods stayed away from the proceedings because she did not wish to perjure herself on behalf of Mrs. Pruitt.

CONCLUSION

It is respectfully submitted that the Decision and Order of the National Labor Relations Board made and entered in this matter was not in accordance with the law or the facts and a Decree of this court should be made and entered setting aside said Decision and Order and dismissing the complaint herein in its entirety.

Respectfully Submitted,

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JAMES G. RICHMOND
Box 1265
Roseburg, Oregon

APPENDIX

TABLE OF EXHIBITS

(All were admitted without objection)

Identifying Number	Description	Transcript Reference
General Counsel's No. 1A	Charge against Employer dated February 15, 1961.	
General Counsel's No. 1B	Affidavit of Service upon Employer of 1A, dated February 15, 1961.	
General Counsel's No. 1C	Affidavit of Service upon Independent Particle Board Employees, Inc., of 1A, dated February 15, 1961.	
General Counsel's No. 1D	Charge against Labor Organization, dated February 15, 1961.	
General Counsel's No. 1E	Affidavit of Service of 1D dated February 15, 1961.	
General Counsel's No. 1F	Order consolidating cases, Complaint, and Notice of Hearing dated April 13, 1961.	
General Counsel's No. 1G	Affidavit of Service of 1F dated April 14, 1961.	
General Counsel's No. 1H	Answer of Pacific Plywood Company.	
General Counsel's No. 1I	Answer of Independent Particle Board Employees, Inc., dated April 26, 1961.	
General Counsel's No. 1J	Index and Description of Formal Documents.	
General Counsel's No. 2	Letter dated November 25, 1960, from Respondent Union to Petitioner with reference to action under Article III of contract.	

Identifying Number	Description	Transcript Reference
General Counsel's No. 3	Copy of Article III of the contract between Sierra and Respondent Union. (Sierra is Petitioner.)	
General Counsel's No. 4	Letter of November 22, 1960 from Respondent Union to Petitioner's payroll department with reference to withholding Pruitt's dues.	
General Counsel's No. 5	Petition to Sierra (Petitioner) signed by 16 employees.	
General Counsel's No. 5A	Envelope for General Counsel's No. 5.	
General Counsel's No. 6	Letter dated November 5, 1960 from Respondent Union to Pruitt with reference to trial and dismissal.	
General Counsel's No. 7	Letter from Pruitt to Respondent Union with reference to Charges, etc.	
General Counsel's No. 8	Notification of trial from Respondent Union to Pruitt.	
General Counsel's No. 9	Letter to Respondent Union from Pruitt.	
General Counsel's No. 10	Wilson's affidavit to N.L.R.B. investigator Strumpf.	
General Counsel's No. 11	Minutes of a meeting of Respondent Union.	
Respond. Union's No. 1	Minutes of a meeting of August, 1960.	
Respond. Union's No. 2	Minutes of a meeting of September, 1960.	
Respond. Union's No. 3	Minutes of a meeting of October, 1960.	

Identifying Number	Description	Transcript Reference
Respond. Union's No. 4.	Minutes of a meeting at which trial of Pruitt was held.	
Respond. Union's No. 5	Envelope which contained General Counsel's No. 9, postmarked November 23, 1960.	
Petitioner's No. 1A	Letter from Lorna Green to Petitioner.	
Petitioner's No. 1B	Envelope for 1A.	
Petitioner's No. 2A	Letter from Bob Pryce to Petitioner.	
Petitioner's No. 2B	Envelope for 2A.	
Petitioner's No. 3A	Letter of Sylvia Crites to Petitioner.	
Petitioner's No. 3B	Envelope for 3A.	
Petitioner's No. 4A	Letter of Phyllis Candelaria to Petitioner.	
Petitioner's No. 4B	Envelope for 4A.	
Petitioner's No. 5	Warning slip given to Anita Ashley.	
Petitioner's No. 6	Termination slip to Pruitt.	
Petitioner's No. 7	Letter of Recommendation for Pruitt.	
Petitioner's No. 8	Letter directed to IWA.	
Petitioner's No. 9	Two letters, IWA to Petitioner and Petitioner to IWA.	
Petitioner's No. 10	Interoffice Memo.	